

AMENDED IN SENATE JUNE 16, 2010
AMENDED IN SENATE APRIL 22, 2010
AMENDED IN SENATE APRIL 12, 2010

SENATE BILL

No. 884

**Introduced by Senator Ashburn
(Coauthor: Senator Runner)**

January 19, 2010

An act to amend Sections 6225, 6459, and 6592 of, and to add Sections 6225.1 and 6225.2 to, the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 884, as amended, Ashburn. Sales and use taxes: use tax: administration.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. In order to facilitate the collection of the use tax, a qualified purchaser, as defined, is required to register with the State Board of Equalization and to report and pay by April 15 the use tax owed for the previous calendar year, as provided.

This bill, *for reporting periods commencing on and after January 1, 2010*, would *revise the above requirements to instead require a qualified purchaser that is subject to the tax imposed by the Personal Income Tax Law to file a return for use tax by April 15, following the close of the calendar year, and to file a return made on the basis of a fiscal year by the 15th day of the 4th month following the close of the fiscal year. The bill would require a qualified purchaser that is subject to the tax imposed*

by the Corporation Tax Law to file a return for use tax by March 15, following the close of the calendar year, and to file a return filed on the basis of the fiscal year by the 15th day of the 3rd month following the close of the fiscal year. The bill would authorize the board to grant a reasonable extension of time for filing a return, as specified, and to grant a reasonable extension of time for the payment of tax when it determines that good cause exists, would authorize a refund of penalties paid with respect to reporting periods in 2007, 2008, and 2009, and would delay the imposition of any authorized penalties for qualified purchasers until on or after March 16, 2011 *provider that a qualified purchaser is subject to other related provisions governing returns and payments and would authorize the board, for the 2009 calendar year reporting period only, to grant a reasonable extension of time for filing a return when it determines that good cause exists pursuant to these provisions. The bill would prohibit a penalty from being imposed on a qualified purchaser's failure to timely remit use tax for reporting periods in 2007, 2008, and 2009, if the qualified purchaser remits payment of the use tax attributable to those periods on or before March 15, 2011. The bill would also require the board to refund any penalty paid with respect to those taxes, as prescribed, provided that the qualified purchaser has paid all use tax liability for those reporting periods on or before March 15, 2011.* The bill would declare that its provisions and retroactive application serve a public purpose, as specified.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6225 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 6225. (a) In order to facilitate the collection of use tax imposed
- 4 by this part, a qualified purchaser shall register with the board on
- 5 a form prescribed by the board and shall set forth the name under
- 6 which the qualified purchaser transacts or intends to transact
- 7 business, the location of the qualified purchaser's place or places
- 8 of business, and other information that the board may require.
- 9 (b) (1) Article 1 (commencing with Section 6451) of Chapter
- 10 5 of this part shall apply to a qualified purchaser, except that a

return showing the total sales price of the tangible personal property purchased by the qualified purchaser, the storage, use, or other consumption of which became subject to the use tax during the preceding calendar year, and which was not paid to a retailer required to collect the tax or which was not paid to a retailer the qualified purchaser reasonably believed was required to collect the tax, shall be filed, together with a remittance of the amount of the tax due, with the board ~~in accordance with paragraphs (1) and (2):~~ *on or before April 15.*

~~(1) For a qualified purchaser subject to the tax imposed by Part 10 (commencing with Section 17001), a return filed pursuant to this section on the basis of the calendar year shall be filed on or before April 15, following the close of the calendar year. A return made on the basis of a fiscal year shall be filed on or before the 15th day of the fourth month following the close of the fiscal year.~~

~~(2) For a qualified purchaser subject to the tax imposed by Part 11 (commencing with Section 23001), a return filed pursuant to this section on the basis of the calendar year shall be filed on or before March 15, following the close of the calendar year. A return made on the basis of the fiscal year shall be filed on or before the 15th day of the third month following the close of the fiscal year.~~

(2) For reporting periods on or after January 1, 2010, Article 1 (commencing with Section 6451) of Chapter 5 of this part shall apply to a qualified purchaser, except that a return showing the total sales price of the tangible personal property purchased by the qualified purchaser, the storage, use, or other consumption of which became subject to the use tax during the preceding calendar year, and which was not paid to a retailer required to collect the tax or which was not paid to a retailer the qualified purchaser reasonably believed was required to collect the tax, shall be filed, together with a remittance of the amount of the tax due, with the board.

(c) A “qualified purchaser” means a person that meets all of the following conditions:

(1) The person is not required to hold a seller’s permit pursuant to this part.

(2) The person is not required to be registered pursuant to Section 6226.

(3) The person is not a holder of a use tax direct payment permit as described in Section 7051.3.

1 (4) The person receives at least one hundred thousand dollars
2 (\$100,000) in gross receipts from business operations per calendar
3 year.

4 (5) The person is not otherwise registered with the board to
5 report use tax.

6 ~~(d) "Fiscal year" means an accounting period of 12 months~~
7 ~~ending on the last day of any month other than December.~~

8 ~~(e)~~

9 (d) This section shall not apply to the purchase of a vehicle,
10 vessel, or aircraft as defined in Article 1 (commencing with Section
11 6271) of Chapter 3.5 of this part.

12 SEC. 2. Section 6225.1 is added to the Revenue and Taxation
13 Code, to read:

14 6225.1. (a) *For a return required to be filed for the 2009*
15 *calendar year only*, for purposes of administering Section 6225,
16 the board may grant a reasonable extension of time for filing a
17 return in the manner and form it determines.

18 (1) For a qualified purchaser subject to the tax imposed by Part
19 10 (commencing with Section 17001), except for a qualified
20 purchaser residing or traveling abroad, an extension of time shall
21 not be granted for more than six months. For a qualified purchaser
22 residing or traveling abroad, a return shall be filed no later than
23 the 15th day of the sixth month following the close of the taxable
24 year, unless the requirements for an extension have been fulfilled
25 on or before that date.

26 (2) For a qualified purchaser subject to the tax imposed by Part
27 11 (commencing with Section 23001) no extension or extensions
28 shall aggregate more than seven months from the due date for
29 filing the return.

30 (b) An extension of time granted pursuant to this section is not
31 an extension of time for payment of the tax required to be paid on
32 or before the due date of the return without regard to extension.
33 Penalties and interest shall be imposed, as provided by law, without
34 regard to any extension granted under this section.

35 (c) A reasonable extension for payment of tax required by
36 Section 6225 may be granted by the board whenever in its
37 judgment good cause exists.

38 SEC. 3. Section 6225.2 is added to the Revenue and Taxation
39 Code, to read:

6225.2. A penalty shall not be imposed on a qualified purchaser's failure to timely remit use tax for reporting periods in 2007, 2008, and 2009 unless the qualified purchaser fails to remit payment of the use tax attributable to those periods on or before March 15, 2011. Notwithstanding Section 6902, any penalty paid to the board with respect to use tax due for reporting periods in 2007, 2008, and 2009 shall be refunded to the qualified purchaser, as promptly as feasible, provided *that* the qualified purchaser has paid all use tax liability for those reporting periods on or before March 15, 2011. This section shall not preclude the board from making any determinations for understatements of use tax against the qualified purchaser in accordance with Chapter 5 (commencing with Section 6451).

SEC. 4. Section 6459 of the Revenue and Taxation Code is amended to read:

6459. (a) Except as provided in Section 6225.1, the board for good cause may extend for not to exceed one month the time for making any return or paying any amount required to be paid under this part. The extension may be granted at any time provided a request therefor is filed with the board within or prior to the period for which the extension may be granted.

Any person to whom an extension is granted shall pay, in addition to the tax, interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax would have been due without the extension until the date of payment.

(b) The board may grant an extension for more than one month if both of the following conditions occur:

- (1) A budget for the state has not been adopted by July 1.
- (2) The person requesting the extension is a creditor of the state who has not been paid because of the state's failure to timely adopt a budget.

Any extension granted under this subdivision shall expire no later than the last day of the month following the month in which the budget is adopted or one month from the due date of the return or payment, whichever comes later.

Any person to whom an extension has been granted under this subdivision shall pay, in addition to the tax, interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax would have been

1 due without the extension until the date of payment. However, no
2 interest shall be due on that portion of the payment equivalent to
3 the amount due to the person from the state on the due date of the
4 payment.

5 SEC. 5. Section 6592 of the Revenue and Taxation Code is
6 amended to read:

7 6592. (a) Except as provided in Section 6225.2, if the board
8 finds that a person's failure to make a timely return or payment is
9 due to reasonable cause and circumstances beyond the person's
10 control, and occurred notwithstanding the exercise of ordinary
11 care and the absence of willful neglect, the person shall be relieved
12 of the penalties provided by Sections 6476, 6477, 6479.3, 6480.4,
13 6480.8, 6511, 6565, 6591, 7051.2, 7073, and 7074.

14 (b) Except as provided in subdivision (c) any person seeking to
15 be relieved of the penalty shall file with the board a statement
16 under penalty of perjury setting forth the facts upon which he or
17 she bases his or her claim for relief.

18 (c) The board shall establish criteria that provides for efficient
19 resolution of requests for relief pursuant to this section.

20 SEC. 6. The Legislature finds and declares that this act and its
21 retroactive application are necessary to serve a public purpose by
22 ensuring the fair and equitable treatment of taxpayers.

23 SEC. 7. This act is an urgency statute necessary for the
24 immediate preservation of the public peace, health, or safety within
25 the meaning of Article IV of the Constitution and shall go into
26 immediate effect. The facts constituting the necessity are:

27 In order to address problems relating to administration and
28 collection of the use tax and to prevent undue hardship to taxpayers,
29 it is necessary that this act take effect immediately.